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July 2, 2001  
OFFICE OF THE  
EXECUTIVE SECRETARY

Mr. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Re: Petition of MCI WorldCom, Inc. to Enforce Interconnection  
Agreement with BellSouth Telecommunications, Inc.  
Docket No. 99-00662

Dear David:


Enclosed for filing are the original and thirteen copies of the petition for appeal of MCImetro Access Transmission Services, Inc. of the Hearing Officer's Initial Order in the above-captioned proceeding.

Copies are being served on counsel of record.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

  
Henry Walker

HW/nl  
Enclosures

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

IN RE: PETITION OF MCI	)	
WORLDCOM, INC. TO ENFORCE	)	
INTERCONNECTION AGREEMENT	)	DOCKET NO. 99-00662
WITH BELL SOUTH	)	
TELECOMMUNICATIONS, INC.	)	

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**PETITION FOR APPEAL**

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MCImetro Access Transmission Services, Inc. ("MCImetro or MCIm") files this Petition for Appeal of the June 15, 2001 Initial Order of the Hearing Officer in Docket No. 99-00662, In Re: Petition of MCI WorldCom to Enforce Interconnection Agreement with BellSouth (hereinafter "Initial Order") on the issue of the appropriate reciprocal compensation rate to be paid under the interconnection contract between MCIm and BellSouth.

MCIm believes that the Hearing Officer properly construed the language of the MCIm-BellSouth interconnection contract, and the intent of the parties to that contract, to require that local calls to Internet Service Providers (ISP) is considered to be traffic subject to the reciprocal compensation provisions of the agreement. However, when the Hearing Officer came to address the issue of the appropriate reciprocal compensation rate to be paid, the Hearing Officer strayed from an analysis of the "four corners" of the contract and erroneously interjected policy factors irrelevant to contract interpretation.

**ARGUMENT**

MCIm filed its Petition to Enforce its Interconnection Agreement with BellSouth on September 19, 1999. The interconnection contract that MCIm was seeking to enforce

was executed by the parties on April 4, 1997 and approved by the Tennessee Regulatory Authority ("Authority") by Order dated May 30, 1997. The obligations of the parties to the interconnection contract, therefore, were formed at that time. The language which specifies the obligations of the parties with regard to the reciprocal compensation rate to be paid for the termination of local traffic is contained in Attachment IV, "Interconnection," Section 2, "Compensation Mechanisms."

### The Contract Language

The language regarding the appropriate reciprocal compensation rate is as follows (emphasis added):

"2.4 MCIIm may designate an IP at any Technically Feasible point including but not limited to any electronic or manual cross-connect points, collocations, telco closets, entrance facilities, and mid-span meets where mutually agreed upon. The transport and termination charges for local traffic flowing through an IP shall be as follows:

2.4.1 When calls from MCIIm are terminating on BellSouth's network through the BellSouth tandem, MCIIm will pay to BellSouth dedicated transport charges from the IP to the tandem for dedicated or common transport. MCIIm shall also pay a charge for tandem switching, dedicated or common transport to the end office (with mileage calculated as the weighted average of all end offices subtending that tandem), and end-office termination.

2.4.2 When BellSouth terminates calls to MCIIm's subscribers using MCIIm's switch, BellSouth shall pay to MCIIm dedicated transport charges from the IP to the MCI Switching Center for dedicated or common transport. BellSouth shall also pay to MCIIm a charge symmetrical to its own charges for tandem switching, tandem-to-end-office transport, and end office termination as identified in Section 2.4.1.

2.4.3 MCIIm may choose to establish direct trunking to any given end office. If MCIIm leases trunks from BellSouth, it shall pay charges for dedicated or common transport. For calls terminating from MCIIm to subscribers served by these directly-trunked end offices, MCIIm shall also pay an end-office termination. For

BellSouth traffic terminating to MCIIm over the direct end office trunking, compensation payable by BellSouth shall be the same as that detailed in Section 2.4.2 above.”

### The Hearing Officer’s Decision

While the Hearing Officer concluded, on the basis of the contract language, that a “symmetrical rate should be paid”, (see, Initial Order, pg. 28), he erroneously modified this conclusion based on factors that were not relevant to an interpretation of the language of a contract formed in 1997.

“The Hearing Officer views symmetrical rates in accordance with the FCC Rules, as rates that one carrier assesses from another carrier for the transport and termination of telecommunications traffic equal to the rates the other carrier assesses from itself for the ‘same services’. Therefore, MCIImetro’s network would have to perform functions similar to those performed by BellSouth tandem switches to be considered symmetrical and to receive the tandem rate for reciprocal compensation. The Agreement includes rates that were agreed upon for interconnection through the BellSouth tandem at \$.005 per minute and direct end office termination rates of \$.004 per minute. However, the Hearing Officer has found nothing in any of the direct or rebuttal testimony or in the post-hearing briefs from MCI WorldCom to support the notion that MCIImetro’s network performs functions similar to BellSouth’s tandem functions or actually switches traffic on a tandem basis”.

Initial Order, pg. 28, emphasis added.

There is a good reason why the Hearing Officer found no evidence or argument from MCIIm on this subject. The contract does not say “same services.” It says “symmetrical rates.” Therefore, MCIIm did not request that the Hearing Officer make a factual determination as to the geographic reach<sup>1</sup> of MCIIm’s network or a determination

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<sup>1</sup> The Hearing Officer cited the FCC’s rules (47 C.F.R. Section 51.711) for the proposition that MCIImetro’s network would have to perform similar tandem “functions” as BellSouth’s network in order to receive tandem rate treatment. However, the Hearing Officer was apparently not aware that the FCC has since clarified that its rules do not require that switches perform similar functions. Instead, the agency wrote that

as to whether MCIIm should receive tandem reciprocal compensation rates in the future. That is a proper inquiry in a contested arbitration to form a new interconnection agreement to establish the parties obligations and govern the parties conduct prospectively. ( See, e.g. Issue No.51, Docket No. 00-00309, Petition of MCIImetro for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Concerning Interconnection and Resale under the Telecommunications Act of 1996).

This is a straight forward petition to enforce a four-year-old contract, not an arbitration proceeding to write a new agreement. The contract either does, or does not, provide for symmetrical payments. In this context, it is not appropriate to introduce evidence over the geographic reach of MCIIm's network. The time to have investigated that issue, if any investigation were needed, was in 1997 prior to the formation of the parties obligations under the interconnection agreement at issue in this case.

## CONCLUSION

As indicated by the Hearing Officer, the plain language of the interconnection contract clearly obligates BellSouth to pay MCIIm a rate that is "symmetrical" to the rate that BellSouth charges MCIIm to terminate traffic on its network. The evidence established that BellSouth was charging MCIIm a rate of \$.005 per minute to terminate MCIIm's customers' local calls on its network and that MCIIm was charging BellSouth a "symmetrical" rate of \$.005 per minute to terminate BellSouth's customers' local calls in


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its rules only require "a carrier demonstrating that its switch serves 'a geographic area comparable to that served by the incumbent LEC's tandem switch' is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network." FCC Notice of Proposed Rulemaking, CC Docket No. 01-92, released April 27, 2001. BellSouth has recently conceded in their 271 proceedings that "only the geographic test is required." See, e.g. Testimony of John A. Ruscilli, Before the Alabama Public Service Commission, Docket No. 25835, June 19, 2001.

its network. This is what the contract calls for and BellSouth is obligated to pay this symmetrical rate.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

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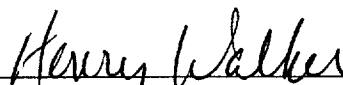
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*Counsel for MCI WorldCom*

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 2<sup>nd</sup> day of July, 2001.

Guy Hicks, Esq.  
BellSouth Telecommunications, Inc.  
333 Commerce St., Suite 2101  
Nashville, TN 37201-3300

  
Henry Walker